

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

**MILLARD GLEN NICHOLS,**

**Petitioner**

**v.**

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**CIVIL ACTION NO. 1:05CV63  
CRIMINAL NO. 1:04CR55  
(Judge Keeley)**

**UNITED STATES OF AMERICA,**

**Respondent.**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On April 11, 2005, pro se petitioner, Millard Glen Nichols, filed a petition pursuant to 28 U.S.C. § 2255. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.09.

On March 9, 2007, Magistrate Judge Kaull issued a Report and Recommendation recommending that Nichols' Motion Under § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody be denied. The Magistrate Judge determined:

- 1) that Nichols' plea agreement contained a knowing and voluntary waiver of his right to collaterally attack his sentence;
- 2) that he failed to demonstrate that his counsel's performance was deficient;
- 3) that he incorrectly asserted that the Court erred by "enhancing" his sentencing when the Court refused to grant him a

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**ORDER ADOPTING OPINION/REPORT AND RECOMMENDATION**

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three level reduction for acceptance of responsibility after finding that he violated the conditions of his pretrial release; and

4) that his claims pursuant to Blakely v. Washington, 542 U.S. 296 (2004) and United States v. Booker, 543 U.S. 220 (2005) are without merit because he expressly waived his rights under Blakely in his plea agreement and Booker does not apply retroactively. The Magistrate Judge further recommended that the "Motion to Expedite Proceedings or Set Bond" be denied.

The Report and Recommendation also specifically warned that failure to object to the recommendation would result in the waiver of any appellate rights on this issue. Nichols did not file any objections<sup>1</sup> and the United States of America filed a response stating that it did not object to the findings in the Report and Recommendation.

Therefore, the Court **ADOPTS** the Report and Recommendation in its entirety., **DENIES AS MOOT** the Motion to Expedite Proceedings (docket no. 44), and **DENIES** the Motion Under § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket

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<sup>1</sup> The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

ORDER ADOPTING OPINION/REPORT AND RECOMMENDATION

No. 29 in 1:04CR55 and Docket No. 1 in 1:05CV63) and **ORDERS** the case **DISMISSED WITH PREJUDICE** and stricken from the Court's docket.

The Clerk is directed to mail a copy of this Order to the pro se petitioner, certified mail, return receipt requested and to counsel of record.

Dated: June 8, 2007

/s/ Irene M. Keeley

IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE